



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 06-846
April 13, 2006

DOMESTIC AUTHORIZATION GRANTED

Application for Transfer of Control of Birch Telecom, Inc., Debtor-in-Possession, to the Shareholders of the Newly Reorganized Birch Telecom

WC Docket No. 06-45

By the Chief, Wireline Competition Bureau:

On February 17, 2006, Birch Telecom, Inc., Debtor-in-Possession (“Birch DIP”) and the shareholders of the newly reorganized Birch Telecom (together “Applicants”), filed an application pursuant to sections 63.03 and 63.04 of the Commission’s rules¹ requesting authority to transfer control of the domestic section 214 authorizations held by certain subsidiaries of Birch DIP from Birch DIP to the shareholders (“New Birch Shareholders”) of the newly reorganized Birch Telecom (“New Birch”) pursuant to a Third Amended Joint Reorganization Plan proposed by Birch DIP.²

The Commission released a public notice accepting this application for streamlined processing on February 27, 2006. On March 13, 2006, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the “Executive Branch Agencies”) filed with the Commission a letter requesting that the Commission defer grant of this application while the Executive Branch Agencies address potential national security, law enforcement, and public safety issues.³ On April 10, 2006, the Executive Branch Agencies withdrew their March 13, 2006 request to defer action on the application noting that they have no objection to the application.⁴

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² On April 6, 2006, Birch DIP and its subsidiaries filed a supplement to the application.

³ *See* Letter from Laura H. Parsky, Deputy Assistant Attorney General, United States Department of Justice Criminal Division, to Marlene H. Dortch, FCC, WC Docket No. 06-45 and ITC-ASG-20060221-00111, ITC-ASG-20060221-00112, ITC-ASG-20060221-00113, ITC-ASG-20060221-00114, ITC-ASG-20060221-00115, and ITC-ASG-20060221-00116 (dated March 13, 2006).

⁴ *See* Letter from Laura H. Parsky, Deputy Assistant Attorney General, United States Department of Justice Criminal Division, to Marlene H. Dortch, FCC, WC Docket No. 06-45 and ITC-ASG-20060221-00111, ITC-ASG-

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application will serve the public interest, convenience, and necessity. Upon consummation of the transaction, New Birch will have a market share in the interstate, interexchange market of less than 10 percent, and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. In addition, the Applicants and their affiliates are not dominant with respect to any service.

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.⁵ Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules,⁶ the Wireline Competition Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.⁷ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.⁸

For further information, please contact Adam Kirschenbaum at (202) 418-7280.

– FCC –

20060221-00112, ITC-ASG-20060221-00113, ITC-ASG-20060221-00114, ITC-ASG-20060221-00115, and ITC-ASG-20060221-00116 (dated April 10, 2006).

⁵ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

⁶ 47 C.F.R. § 0.291.

⁷ *See* 47 C.F.R. § 1.103.

⁸ *See* 47 C.F.R. §§ 1.106, 1.115.